



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Mrs. Mary Lee
203 Loudon Road
Apartment 701
Concord, NH 03301

Re: Bow Lake

ADMINISTRATIVE ORDER

No. WD 02-13

April 1, 2002

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Mrs. Mary Lee pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Mrs. Mary Lee is an individual having a mailing address of 203 Loudon Rd., Apt 701, Concord, NH 03301.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. Mrs. Mary Lee is the owner of land located on Point Trinity Drive, Stafford, NH with 150 feet of frontage on Bow Lake, more particularly described on the Strafford tax maps as map 2, lot 24-14 recorded at Book 2379, page 371("the Property") with frontage on Bow Lake. Mrs. Lee purchased the Property on September 21, 2001.
4. Mr. Robert Lee, acting on behalf of his wife, retained Mr. Robert Cutter as the general contractor to clean-up the shoreline and install a lawn area on the Property during the fall of 2001.
5. On November 8, 2001, DES received a complaint from the State of New Hampshire Fish and Game Department, which stated that "a bulldozer was dredging an area of Bow Lake measuring approximately 90 feet by 60 feet. All work was done without a permit."

6. On November 8, 2001, DES requested and received tax map information from the Strafford Town Office.

7. On November 8, 2001, DES personnel inspected the Property and found the following:

- (a) Approximately 1,500 square feet of emergent wetland had been dredged from approximately 100 linear feet of shoreline in and adjacent to Bow Lake;
- (b) Further it was estimated that approximately 3,500 square feet of lakebed had been dredged;
- (c) Dredged spoils from the shoreline wetland and lakebed were deposited in the uplands adjacent to the shoreline covering approximately 18,000 square feet, to an average estimated depth of 3 inches; and
- (d) The dredged materials were placed in the uplands to supplement other materials for installation of a lawn as confirmed by the homeowner during the post inspection interview. During an interview, Mr. Lee identified Mr. Cutter as the bulldozer operator.

8. On November 9, 2001, DES faxed informational fact sheets to Mr. Lee explaining what types of erosion/sediment controls need to be installed and how to install them.

9. On November 13, 2001, DES received an email from Mr. Lee containing a cover letter with photos showing the installation of silt fence along the shoreline as requested by DES personnel, and in accordance with the fact sheets sent to Mr. Lee.

10. On November 14, 2001, DES personnel spoke with Mr. Lee concerning continued work on the Property. Mr. Lee was instructed only to install erosion control measures needed to stabilize the Property and to cease all other work in the lake, along the shoreline and in adjacent uplands.

11. On November 28, 2001, DES received an email from Mr. Lee containing a photo of the upland area showing the placement of hay bales and mulch.

13. RSA 482-A:3, I prohibits the excavation, removal, filling, dredging, or construction of any structures in or adjacent to any water of the state without a permit from DES.

14. DES has no record of a permit for the work on the Property or in the lake.

15. Under RSA 482-A:4, II "waters and adjacent areas: is defined as "wherever fresh water flows or stands...it shall apply to those portions of great ponds or lakes created by the raising of the water level of the same, whether by public or private structure, and to all surface waters of the state as defined in RSA 485-A:2 which contain water..."

16. Under RSA 485-A:2, XIV "surface waters of the state" is defined as "streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial."

17. Under Wt 101.28, "dredge" means to dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland, surface water body, or other area within the DES's jurisdiction.

18. Under Wt 101.29, "dredged spoils" means material removed as a result of dredging.

19. Bow Lake is a jurisdictional water under RSA 482-A.

D. DETERMINATION OF VIOLATIONS

1. Mrs. Lee has violated RSA 482-A:3, I by dredging approximately 3,500 square feet of the Bow Lake lakebed without a permit from DES.
2. Mrs. Lee has violated RSA 482-A:3, I by dredging approximately ,500 square feet of wetland located in the bank adjacent to Bow Lake without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Mrs. Lee as follows:

1. Immediately cease all construction activities on the Property and in and adjacent to Bow Lake, except as specifically authorized by this Order.
2. Maintain the erosion and sediment controls along the top of bank, and mulch over the exposed soils located in the uplands.
3. Within seven days of this Order retain the services of qualified wetland scientist to prepare a restoration plan.
4. Submit a restoration plan within 60 days to DES for restoration of the 1,500 square feet of disturbed shoreline wetland and 3,500 square feet of lakebed for review and approval. The restoration plan should include:

A plan with dimensions, drawn to scale, indicating

Delineation of the border wetlands, toe of the shoreline and lakebed elevations prior to dredging along the entire frontage of the property; and

2. Delineation of the existing conditions along the entire lake frontage as they relate to the border wetlands, toe of the shoreline and lakebed elevations.

- b. A plan showing current and proposed topographic elevations, including through plan and cross-sectional views, for reestablishing the adjacent wetland, shoreline and lakebed;

A proposed means for erosion and sediment controls, such as silt fence, hay bales, etc.;

A proposed planting plan for the replacement of lost wetland and stabilization of the shoreline and adjacent uplands;

- e. A proposed construction sequence listing equipment, and methods for accomplishing restoration no later than April 24, 2002; and

A proposed monitoring plan, including at least two restoration progress assessment reports to be filed with DES.

4. Implement the restoration and planting plans upon approval and as conditioned by DES
6. Send correspondence, data, reports, and other submissions made in connection with this

Administrative Order, **other than appeals**, to DES as follows:

Mary Ann Tilton
DES Water Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
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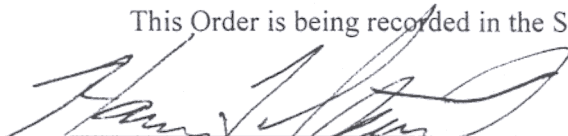
F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.


G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mrs. Lee remains obligated to comply with all applicable requirements, in particular the hiring of a professional wetland scientist or environmental consultant to complete and successfully restore the shoreline adjacent to Bow Lake. DES will continue to monitor Mrs. Lee's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director
Water Division



George Dana Bisbee
Assistant Commissioner

Certified Mail/RRR: 7099 3400 0003 0689 5409

cc: Gretchen Rule, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Strafford County Registry of Deeds
Strafford Selectmen
Strafford Conservation Commission
Jody Connor, DES Limnology Center Director